



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0065, Notice 1]

Receipt of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petitions.

SUMMARY: Ricon Corporation (Ricon), has determined that certain S-Series and K-Series Classic wheelchair lifts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles*. Because of Ricon's determination, Navistar, Inc., on behalf of IC Bus, LLC (Navistar), who installed the S-Series and K-Series Classic wheelchair lifts in their buses, determined that model year (MY) 2013–2019 IC buses do not comply with FMVSS No. 404, *Platform Lift Installation in Motor Vehicles*. Ricon and Navistar, collectively referred to as the “the petitioners,” filed the appropriate noncompliance reports and subsequently petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioner's petitions.

DATES: The closing date for comments on the petition is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered fully possible.

When the petitions are granted or denied a notice of the decision will also be published in the ***Federal Register*** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a *Federal Register* notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Ricon has determined that certain S-Series and K-Series Classic wheelchair lifts do not fully comply with paragraphs S6.10.2.4 of FMVSS No. 403, *Platform Lift Systems for Motor Vehicles* (49 CFR 571.403). Ricon filed a noncompliance report dated June 3, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Ricon subsequently petitioned NHTSA on June 21, 2019, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Because of Ricon's determination, Navistar, who installed the S-Series and K-Series Classic wheelchair lifts in their buses, determined that certain model year (MY) 2013–2019 IC buses do not comply with paragraph S4.1.4 of FMVSS No. 404, *Platform Lift Installation in Motor Vehicles* (49 CFR 571.404). Navistar also filed two noncompliance reports dated June 19, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on July 10, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of the petitioner's petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petitions.

II. Equipment and Vehicles Involved: On June 3, 2019, Ricon submitted a noncompliance report and then on June 21, 2019, subsequently submitted a petition that reported approximately

20,862 S-Series and K-Series Classic wheelchair lifts, manufactured between October 2, 2012, and May 24, 2019, are potentially involved.

In concert with Ricon's filings, Navistar who Ricon sold lifts to and who installed the S-Series and K-Series Classic wheelchair lifts in its vehicles also filed noncompliance reports and an inconsequential noncompliance petition. Appropriately, Navistar determined that approximately 2,921 of the following IC commercial buses and school buses are potentially involved:

- MY 2013–2018 IC CE commercial buses, manufactured between May 10, 2012, and November 7, 2017.
- MY 2016 IC RE commercial buses, manufactured between November 12, 2015, and November 16, 2015.
- MY 2013–2015 IC BE school buses, manufactured between July 11, 2012, and September 17, 2014.
- MY 2013–2015 IC AE school buses, manufactured between December 10, 2012, and October 16, 2014.
- MY 2013–2019 IC CE school buses, manufactured between May 10, 2012, and May 2, 2018.
- MY 2013–2014 IC RE school buses, manufactured between August 30, 2012, and November 18, 2013.
- MY 2016–2017 IC RE school buses, manufactured between January 13, 2015, and January 22, 2016.
- MY 2019 IC RE school buses, manufactured between February 8, 2018, and February 8, 2018.

Ricon reported that 20,862 S-Series and K-Series Classic wheelchair lifts are potentially involved while Navistar the only OEM to file, reported in total, 2,921 buses with the noncompliant S-Series and K-Series Classic wheelchair lifts are potentially involved. NHTSA

reached out to Ricon on multiple occasions to try to reconcile the difference in number of lifts reported versus the number of vehicles reported. In an e-mail dated June 10, 2020, Ricon provided a table that reported that 20,862 S-Series and K-Series Classic wheelchair lifts were produced, with 6,149 going to dealers, 14,701 going to OEMs, and 12 with Ricon's parent company Wabtec Corporation (Wabtec). Below is a table that outlines the different numbers as reported by Ricon, by date, for the S-Series and K-Series Classic wheelchair lifts and the total number of vehicles as reported by the OEM.

RICON S-Series and K-Series Classic wheelchair lifts potentially involved			
	Ricon's 6/21/19 Reporting	Ricon's 6/10/20 Reporting	Total OEM 573 Reporting's
Dealers		6,149	
OEMs		14,701	
Wabtec*		12	
Total	20,862	20,862	2,921

*Ricon is a subsidiary of WABTEC

The total number of vehicles reported by Ricon and the OEM has not changed and the number S-Series and K-Series Classic wheelchair lifts as reported by Ricon on June 10, 2020, are the most up-to-date numbers. Based on current numbers as shown in the table above, there are still 18,571 lifts that have not been accounted for. Despite several meetings and communication with Ricon directed to discerning the distribution and disposition of those lifts, NHTSA has not been able to obtain additional information about the lifts not sold directly to vehicle manufacturers. NHTSA also feels it is prudent to emphasize that any decision on these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and

vehicles under their control after the petitioners notified them that the subject noncompliance existed.

III. Noncompliance: Ricon explains that its Classic S-Series and K-Series platform lifts do not comply with the inner roll stop interlock requirements of FMVSS No. 403, S6.10.2.4 and S6.10.2.7 when tested in accordance with the test procedure at S7.6.1. The subject lifts, as installed in certain commercial buses and school buses, do not comply with paragraph S4.1.4 of FMVSS No. 404.

IV. Rule Requirements: Paragraph S6.10.2.4 and paragraph S6.10.2.7 of FMVSS No. 403, include the requirements relevant to the deployment of the inner roll stop. When the platform reaches a level where the inner roll stop is designed to deploy, the platform must stop unless the inner roll stop has deployed. Verification with this requirement is made by performing the test procedure specified in S7.6.1. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop or platform edge) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in S7.6.1.

Paragraph S4.1.4 of FMVSS No. 404, includes lift-equipped buses, school buses, and MPVs other than motor homes with a GVWR greater than 4,536 kg (10,000 lb.) must be equipped with a public use lift certified as meeting FMVSS No. 403.

V. Summary of Petitions:

The following views and arguments presented in this section, “V. Summary of Petitions,” are the views and arguments provided by the petitioners. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioners described the subject noncompliance and stated their belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petitions, the petitioners submitted the following arguments:

1. The Occupant Unloading Orientation in the Test Procedure Does Not Represent Real-World Use.

The petitioners state that for public use lifts, Ricon's operator instructions (and the industry standard practice) instructs that an occupant is to exit the vehicle from vehicle floor loading level facing frontwards, not backwards per the test procedure. In this orientation, the occupant is facing away from the vehicle and can view his/her surroundings on the street or parking lot. In this configuration, the inner roll stop for the Classic lifts performs as designed. When disembarking the vehicle consistent with Ricon's operator instructions, and consistent with the way occupants regularly exit the vehicle¹, the micro switch is triggered consistently regardless of the placement of the wheelchair because there is always sufficient weight distribution from the mobility device to the micro switch. The loading and unloading direction in the test procedure is not consistent with real-world application or use and is not consistent with industry practice or the way that Ricon (or its competitors²) instruct that the lifts should be used. As such, in real-world operation, there is no safety risk presented.

Per the petitioners, the position of the wheelchair test device specified in the FMVSS No. 403 test procedure is inconsistent with the actual use of the lifts and therefore, in actual use, no real-world safety risk is presented. The test procedure provides that the platform should be maneuvered to vehicle floor level loading position and the wheelchair test device should be placed on the platform with only one front wheel of the wheelchair test device facing the vehicle. *See* FMVSS No. 403, S7.6.2. This instruction is contrary to the instructions provided in the Ricon operator's manual instructions and contrary to industry practice. For public use lifts, the standard industry

¹ The reason why loading with the occupant's back to the vehicle is the standard practice is that it is designed to prevent injury to the occupant's lower extremities and feet.

² In the pictorials on their websites, competitors also promote that the appropriate way to enter and exit the platform lift is facing away from the vehicles.

practice is to load and unload occupants with mobility devices rearward, facing away from the vehicle and with their back to the vehicle³. Significantly, NHTSA's own literature is consistent with Ricon's approach and states that wheelchair occupants should be loaded and unloaded facing away from the vehicle⁴.

As written, the instructions in the test procedure are inconsistent with the industry standard and Ricon's operator's manual for public use lifts⁵. The petitioners state that the operator's manual for the private use Classic lifts describes how an occupant should board the lift and that similar instructions on passenger orientation are provided for the public use version of the Classic lifts.

The petitions also note that to complement the operating instructions, Ricon applies decals on the vertical arms of the lift to remind the lift operator and reinforce the correct means to load and unload an occupant onto the lift.

2. The Classic Lifts Incorporate Redundant Safety Features.

The petitioners contend that for public use lifts, assuming the user exited the vehicle backwards per the test procedure, if the inner roll stop began to deploy there are redundant safety features that would preclude any injury. All the Classic lifts have an outer barrier that will remain deployed (in the vertical position) until the lift reaches the ground level unloading position. Because the outer barrier remains vertical throughout the entire lift operation, there is no risk that the occupant could roll backwards and off the lift itself. In addition, on all public use lifts there is a belt retention device which acts as another redundant safety feature. The belt retention device would also restrain an occupant safely on the lift should the inner barrier begin to deploy while occupied and the

³ See Best Practices for Loading and Unloading Wheelchair Students.

⁴ See School Bus Driver In-Service Safety-Series.

⁵ Ricon says that in response to a comment from a manufacturer during the FMVSS No. 403 rulemaking about inconsistent loading direction in the manufacturer's operator manual and the test procedure, NHTSA concluded that since the ADA does not apply to private lifts, the loading requirements were not inconsistent with the ADA. The Agency did not, however, address that same concern as it applied to public use lifts and thus, it remains an open point that was not addressed through the rulemaking process. See 67 FR 49416 (December 27, 2002)

handrails on the sides of the lift will prevent any tipping from the sides. The environment in which these lifts are used also diminishes any potential risk to safety. When the Classic lifts operate as a public use lifts, there will always be a lift attendant present to monitor the lift to ensure the occupant enters and exits the lift safely and is properly positioned on the platform before activating the lift. When the lift attendant is correctly monitoring the lift occupant, as they should, even if the occupant were to exit the vehicle by backing onto the lift, if the inner roll stop did begin to deploy while it was occupied the lift attendant can quickly stop lift operation.

Per the petitioners, although Classic lifts used as private use lifts may not have the retention belt in all instances, if a passenger who is also the operator of the private use lift were to disembark the vehicle backwards and remain partially on the inner roll stop, the operator/passenger would simply need to release the momentary switch on the control pendant to automatically and immediately stop the operation of the lift. Because the control pendant utilizes a momentary switch, as soon as the individual releases the activation button the lift ceases operation. In this situation, and despite all the other factors which are necessary to create the condition in the first place, an operator/passenger can immediately prevent further movement of the inner roll stop. Private use lifts without a retention belt still have an operable outer barrier and handrails for protection. In addition, consistent with FMVSS No. 403, the private use lifts all have operating instructions near the lift controls and in the vehicle owner's manual, "that contain a warning that wheelchairs should back onto the platform when entering from the ground."

3. NHTSA has previously granted petitions where wheelchair lifts did not meet the performance requirements of FMVSS No. 403.

The petitioners argue that the Agency has granted inconsequentiality petitions where the manufacturer has not met the performance requirements of FMVSS No. 403,

finding that the noncompliance did not pose an increased risk to safety as the lift is used in the real world. The performance of Ricon's platform lifts is consistent with this precedent.

For example, the Agency granted a petition for decision of inconsequential noncompliance submitted by The Braun Corporation (Braun) where the lift handrails did not meet the values for deflection force stated in FMVSS No. 403. The Agency recognized that while the handrails collapsed and did not meet the displacement requirement, they did not do so catastrophically. The Agency explained the failure "would not cause the passenger to become unstable, adversely interact with the vehicle, or pose a safety concerns that the handrail requirements were intended to address" and that its concern in instituting the deflection force requirement was the possibility of a catastrophic failure of the handrails, which would expose the occupant to a risk of injury. According to the petitioners, in granting the petition, the Agency not only "anticipated that future tests will specify placement and direction of forces that will be more focused to address worst-case handrail displacement and real-world safety problems," but it also recognized the noncompliance did not "pose a safety concern that the handrail requirements were intended to address." *See* 72 FR 19754 (April 19, 2007). Thus, the Agency has recognized that there are inherent provisions in FMVSS No. 403 that may not test for the types of safety risks that can arise in actual use and are therefore inconsequential.

The petitions further note that as with the Agency's finding with the Braun petition, in actual use, the Classic lifts do not pose a safety risk. This is because the inner barrier interlock would sense the presence of the rear wheels of the wheelchair occupant who is loaded and unloaded facing away from the vehicle. The heavier weight of the rear wheels is picked up by the sensors and the inner barrier interlock is activated. The

interlock performance is restricted only under the set up per the test procedure, with the front wheels on the inner roll stop and facing the vehicle.

4. In addition, Navistar has reviewed warranty records, field reports, and other applicable Navistar system and determined the following:

- a. Navistar has not received any complaints or other notices from vehicle owners or others regarding this issue.
- b. Navistar is not aware of any accidents or injuries that have occurred because of this issue.
- c. Navistar is not aware of any warranty claims for this issue.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

The petitioner's complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject lifts and buses that the petitioners no longer controlled at the time it determined that the noncompliance existed. However, any decision of these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery

for introduction into interstate commerce of the noncompliant lifts and buses under their control after the petitioners notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

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